IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.01.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE N. PAUL VASANTHAKUMAR

WRIT APPEAL NO.3429 OF 2004
and WAMP.Nos.6430/04 & 1838/06

1.C. Parthiban
2.Selvi D. Akila .. Appellants

vs.

1.Dr. K. Meena
Convenor, Vice-Chancellor
Committee
Bharathidasan University
Palakaliperur
Tiruchirapalli 620 024.

2.Bharathidasan University
rep. by its Registrar
Palakaliperur
Tiruchirapalli 620 024.

3.Dr. R. Jayaraman
Professor, Dept. of Chemistry
Bharathidasan University
Palakaliperur
Tiruchirapalli 620 024.

4.Dr. S. Palanisamy
Reader & Head (now under suspension)
Dept. of Social Work
Bharathidasan University
Palakaliperur
Tiruchirapalli 620 024.

5.Thiru R. Sridhar
ASO (Now under suspension)
Dept. of Social Work
Bharathidasan University
Palakaliperur
Tiruchirapalli 620 024.

6.Dr. V. Sethuramalingam
Lecturer, Dept. of Social Work
Bharathidasan University
Palakaliperur,Tiruchirapalli 620 024.

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7.Thiru K. Murugesan
Attender/Lab Attender
Formerly at Dept. of Social Work
at present at Department
of Bio-Technology
Bharathidasan University
Palakaliperur
Tiruchirapalli 620 024. .. Respondents

Writ appeal filed under Clause 15 of the Letters Patent against the order of the Hon'ble Mr. Justice A.K. Rajan made in W.P.No.13165 of 2004 dated 06.08.2004. Petition presented under Article 226 of India praying this Court to issue Writ of Declaration declaring the enquiry which is sought to be conducted by the 3rd respondent herein as a one member enquiry officer, into charges leveled against the respondents 4 to 7 herein by the Petitioners and Selvi K. Bharathi and LSelvi P. Shanthi with Regard to Sexual harassment by the 4th respondent herein against Selvi.K.Bharathi, Selvi P.Shanthi and 2nd Petitioner herein as imcompetent void, wholly without Jurisdiction.

For appellants : Mr. AR.L. Sundaresan,Sr.Counsel
for Mrs. A.L. Gandhimathi

For respondents : Mr. C.K. Chandrasekaran
for M/s. Row & Reddy for R.2

Mr.G. Ethirajulu for R.4

Mr. M.S. Pandiyan forR.5 to R.7

No appearance of R.1 and R.3.

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JUDGMENT

(Judgment of the Court delivered by P.SATHASIVAM,J.)

Aggrieved by the order of the learned Single Judge dated 06.08.2004 made in W.P.No.13165 of 2004, the writ petitioners preferred the above writ appeal.

2. For convenience, we shall refer the parties, as arrayed before the learned single Judge.

3. The case of the petitioners as stated in their affidavit is as follows:

The first petitioner, C. Parthiban, is the father of one Selvi P. Shanthi, student of Bharathidasan University, Trichirapalli and the second petitioner Selvi D. Akila, is another student of the same University. The 4th respondent in the writ petition, Dr. S. Palanisamy, was Reader and Head of the Department of Social Works, Bharathidasan University, Trichirapalli. M/s. Selvi.Bharathi and Selvi.P. Shanthi were students of the said Department. The said Bharathi and the 2nd petitioner, D.Akila were students in M.A. (Social Work) and had

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undergone the course during 2000-2002. The said P.Shanthi was an M.Phil student in Social Work and was doing her research work under the guidance of the research guide Dr. B. Sethuramalingam and the reader who was in-charge of M.Phil course undertaken by the said Shanthi was Dr. S. Palanisamy, 4th respondent. Dr. S. Palanisamy, always did not have a good sense of behaviour towards girl students. The above mentioned girl students and others suffered a lot during the tenure of their course. In order to avoid adverse remarks in their Conduct Certificate/Transfer Certificate, they did not lodge any complaint at the relevant point of time. The 2nd petitioner Akila and Selvi.Bharathi had occasion to meet the 4th respondent herein in his chamber and he unnecessarily made them to wait in his chamber for hours together and did not discuss anything about the subject, but put indecent questions for which they being female students would not be able to digest or respond to him. The 4th respondent used to put questions like, "did I catch your hands preventing you from writing the examinations?" and "did I hug you preventing from studying for the examinations?". These are all only few among the numerous statements made by him. On 30.12.2002, Selvi. Shanthi had to submit her thesis for approval by respondents 4 and 5 herein and for that, the respondents 4 and 5 called her to the Chamber of 4th respondent and when Shanthi went there, the 4th respondent alone was in his chamber. The 4th respondent left his seat, came towards Shanthi, caught her by his hand, removed her dress and hugged her in a manner which is unbecoming of a Teacher, which could not be borne by any student.

4. The aforesaid Bharathi, the 1st petitioner Parthiban on behalf of his daughter P. Shanthi and the 2nd petitioner D. Akila lodged complaints with the University against the conduct of the 4th respondent. Subsequently, Shanthi also gave complaint. After finding that if the allegations made in the complaints were proved, it would amount to an offence punishable under the provisions of the Sexual Harassment of Women at their Work Place (Prevention) Act, 2000, the respondents 1 and 2 herein decided to constitute an Enquiry Committee comprising of four persons. The said Enquiry Committee was presided over by the 1st respondent herein. The enquiry was conducted, all the complainants were examined and the said Committee, on careful perusal of the statements made on either side, came to the conclusion that the allegations were serious in nature and they were prima-facie true and serious action should be taken against the respondents 4 to 7 herein. Subsequent to the report of the Committee, the respondents 4 and 5 herein were placed under suspension and respondents 6 and 7 were transferred to other Departments. While the matter stood thus, the petitioners herein were legitimately expecting that the University would take further follow up action against the respondents 4 to 7 herein. However, the same did not happen for quite some time.

5. While so, suddenly the third respondent issued a notice dated 12.04.2004 addressed to all the four complainants and the persons against whom the complaints were lodged stating that he was constituted as an one-member Enquiry Committee for the purpose of enquiring into the charges levelled against respondents 4 to 7 herein. They were asked to appear before the Enquiry Officer. According to the petitioners, when a full-fledged enquiry was conducted by a Four Member Committee, there is no need for the University to appoint One Man Committee to go into the very same charges and the appointment of One Man Committee is without jurisdiction and not warranted. In those

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circumstances, the petitioners filed the above writ petition seeking appropriate direction to declare that the enquiry, which is sought to be conducted by the third respondent herein as an One-Member Enquiry Officer into the charges levelled against respondents 4 to 7 herein by the petitioners and Selvi K. Bharathi and Selvi P. Shanthi, with regard to sexual harassment by the 4th respondent herein against Selvi K. Bharathi, Selvi P. Shanthi and 2nd petitioner herein as incompetent, void, wholly without jurisdiction.

6. The Registrar, Bharathidasan University, Tiruchirapalli, second respondent herein filed a counter affidavit, wherein it is contended that on receipt of the complaints from the writ petitioners alleging sexual harassment against the 4th respondent Dr.S.Palanisamy, based on the law laid down by the Supreme Court in Vishaka case [Vishaka and Others v. State of Rajasthan and Others - (1997) 6 SCC 241], the University appointed a Complaints Committee headed by a woman as a Chair-person to enquire into the same. The said committee after enquiry submitted a report which disclosed a prima facie case against the 4th respondent. Based on the report, the University initiated disciplinary proceedings against the 4th respondent.

7. The employees of the University including the teaching staff are governed by the Bharathidasan University Act and Rules and Statutes made thereunder. Disciplinary proceedings against them are to be conducted according to the Statutes of the University. Based on the Statutes, a charge memo was issued to respondents 4 to 7 calling upon them to submit their explanation. Their explanations were examined and it was decided to conduct an enquiry into the charges levelled against them. Pursuant to the said decision, the 3rd respondent was appointed as an Enquiry Officer. At this stage, the petitioners filed the writ petition questioning the said enquiry. The enquiry by the complaints Committee was only a preliminary enquiry into the allegations of sexual harassment and the said Committee was required to enquire into the allegations made by the complainants in order to ascertain as to whether there is any prima facie case to proceed against the delinquent either departmentally or through a criminal law. Since the Complainants Committee submitted a report which disclosed a prima facie case against the 4th respondent, disciplinary proceedings has to be taken against the 4th respondent in terms of the Statutes which contemplate an enquiry officer to be appointed who can either be a male or female. The Enquiry officer will have to enquire into the charges levelled against respondents 4 to 7, in which the petitioners may be witnesses. The procedure adopted by the University is in accordance with the Statutes and what is required by the petitioners is not traceable to any provision of the the Act or Statutes. The role of petitioners is only to appear as witnesses.

8. The 4th respondent Dr.S.Palanisamy has filed a counter affidavit, wherein it is stated that the petitioners being complainants should prove their complaints. The absence and failure of P.Shanthi, who is said to have made complaint, to join as a party in the writ petition clearly shows that she is not inclined to face the enquiry. The 4th respondent is a fully qualified post-graduate teacher and initially he was appointed on 06.01.1989 as a Lecturer in the Social works Department in Bharathidasan University. Subsequently, he

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was posted as a Reader-cum-Head of the Department of Social Work of the University in the year 1995-96. His service record is unblemished. According to him, during the academic year of 2001-2002, as Head of the Department in Social work, Bharathidasan University, he issued Character and General Conduct certificate to some of the students including D.Akila, P.Shanthi and Bharathi stating that their conduct is Not Good through Certificates dated 31.07.2002. Apart from this, he also initiated action against some of the staff holding the posts for which they are neither eligible, nor qualified. The complainants as well as other students developed some complex and go to the extent of threatening the guide and Head of the Department and also made attempts to take vengeance against other students after completing their course. He also narrated the academic career of all the complainants in detail. Based on their alleged complaints, a Four Member Committee was formed only to ascertain the facts and not to conduct an enquiry. The report of the fact finding committee has no evidentiary value and as per the University statutes, a full-fledged enquiry has to be conducted. The principles laid down by the supreme Court in Vishaka case [Vishaka and Others v. State of Rajasthan and Others -(1997) 6 SCC 241], are not applicable to the allegations made against him.

9. The 5th respondent has filed a counter affidavit denying all the allegations made against him and he also pleaded that a full-fledged enquiry has to be conducted in terms of the Statutes of the University.

10. In the light of the above pleadings, the learned single Judge by order dated 06.08.2004, after clarifying the position that the University cannot direct the complainants to produce documents in support of their allegations and it is for the University to prove the charges in the enquiry in accordance with the rules and arrive at a finding based on which the concerned Department is to take further action in accordance with law, disposed of the writ petition. Questioning the said order, the writ petitioners filed this appeal.

11. Heard Mr.AR.L.Sundaresan, learned Senior Counsel for the appellant, Mr.C.K.Chandrasekaran, learned counsel for the 2nd respondent, Mr.Ethirajulu, learned counsel for the 4th respondent and Mr. M.S. Pandiyan, learned counsel for respondents 5 to 7.

12. As said earlier, the learned Judge himself obliterated the direction for production of documents by the complainants (petitioners herein) and made it clear that it is for the University to substantiate the charges levelled against respondents 4 to 7. Mr.AR.L.Sundaresan, learned senior counsel appearing for the petitioners/appellants vehemently contended that when the Four Member Committee, after due opportunity to the victim girls as also to the persons against whom allegations were levelled, submitted its report holding that respondents 4 to 7 herein were guilty of sexual harassment, the present One Member Enquiry Committee is not warranted and it is for the University to impose appropriate punishment. On the other hand, learned counsel appearing for the contesting respondents, by drawing our attention to relevant provisions from the Statutes of the University submitted that a full-fledged enquiry has to be conducted

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before inflicting any punishment.

13. There is no need to refer the contents of the complaints made by the complainants. It is not in dispute that based on the complaints given by the complainants dated 03.03.2003 and 04.03.2003, Complaint Committee was constituted by the University. The Committee issued notice to all the complainants as well as respondents concerned and recorded their statements. On 26.03.2003, the Committee unanimously resolved that prima facie case is made out in the complaints submitted by the complainants. The Committee further held that the activities of the Head of the Department Dr. S. Palanisamy would amount to misconduct and moral turpitude, and recommended for further action. In the same report, after finding that Dr. Sethuramalingam and Dr. S.Palanisamy had jointly acted upon, directed for separate action. The Committee also recommended for the suspension of S.Palanisamy and Sridhar till the disposal of the enquiry by the University. We also perused the Committee's report, which is available in the typed set of papers filed by the appellants.

14. Pursuant to the Committee's report, the University has appointed the third respondent as Enquiry Officer. No doubt, the Statutes of the University provide elaborate procedure to be followed before inflicting punishment. But, it is not a case of mere misconduct violating the provisions of the Statutes. Three students made complaints against their Professor and his associates alleging sexual harassment. The Committee consisting of four persons, after going through the statements recorded in the enquiry, found that there is a prima facie case against the delinquents, i.e., respondents 4 to 7. In order to decide the question whether the complainants are again to be examined and cross-examined before the Enquiry Officer appointed under the Statutes of the University, it is useful to refer the judgment of the Supreme Court in the case of Avinash Nagra vs. Navodaya Vidyalaya Samiti reported in 1997 (2) SCC 534. In the case before the Supreme Court, the appellant was appointed as a Postgraduate teacher on 28.01.1994. Initially he worked at Patiala and was transferred to Kinnaur. The respondent institution-Navodaya Vidayalaya Samiti is a co-education institution. The appellant's service was terminated in terms of his letter of appointment giving salary in lieu of notice on the ground of his improper conduct with a girl student. When the appellant filed a writ petition, the High Court, after considering the materials on record, dismissed the same. When the matter came up for admission and the counsel insisted upon an enquiry to be conducted against the alleged misconduct, by order dated 13.03.1996, the Hon'ble Supreme Court directed the management to issue show-cause notice to the petitioner, conduct an enquiry and submit a report within the specified time. In furtherance thereof, show cause notice dated 02.05.1996 together with the statements of the girl, her room-mates and the attender Bharat Singh were supplied to the petitioner. After receipt of the explanation submitted by the appellant and consideration of the entire records, a report was drawn up and submitted to the Court with the finding that the appellant is guilty of moral turpitude involving exhibition of immoral sexual behaviour towards a girl student in Jawahar Navodaya Vidyalaya, Kinnaur. On consideration of the report and the records, the Supreme Court heard the counsel on both sides. After hearing the counsel at length, the Supreme Court framed two

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questions of which we are concerned with the second question, which reads as under:

> "Whether he (appellant) is entitled to a full-fledged enquiry and opportunity to cross-examine the girl students who have given the statements against the appellant?"

It is further seen from the order that the provisions of Central Civil Services (Classification, Control and Appeal) Rules, 1965 of the Government of India would be applicable to the employees of Navodaya Vidyalaya, which is running nation-wide co-educational specialised and prestigious schools in which 1/3rd of the students are girls. With a view to ensure safety and security to girl students and to protect their modesty and prevent their unnecessary exposure at an enquiry in relation to the conduct of a teacher resulting in sexual harassment of the girl students involving misconduct or moral turpitude, a resolution proposing special summary procedure was passed and published by notification dated 23.12.1993, after due approval by the Executives of the respondent-Samiti. The Minister of Human Resources and Development, Government of India is its Chairman. The notification postulates dispensation of regular enquiry under the Rules. Based on the relevant Rules and taking note of the complexity of the matter, the Hon'ble Supreme Court has observed,

> "12. It is axiomatic that percentage of education among girls, even after independence, is fathom deep due to indifference on the part of all in rural India except some educated people. Education to the girl children is nation's asset and foundation for fertile human resources and disciplined family management, apart from their equal participation in socio-economic and political democracy. Only of late, some middle-class people are sending the girl children to co-educational institutions under the care of proper management and to look after the welfare and safety of the girls. Therefore, greater responsibility is thrust on the management of the schools and colleges to protect the young children, in particular, the growing up girls, to bring them up in disciplined and dedicated pursuit of excellence. The teacher who has been kept in charge, bears more added higher responsibility and should be more exemplary. His/her character and conduct should be more like Rishi and as loco parentis and such is the duty, responsibility and charge expected of a teacher. The question arises whether the conduct of the appellant is befitting with such higher responsibilities and as he by his conduct betrayed the trust and forfeited the faith whether he would be entitled to the full-fledged enquiry as demanded by him? The fallen standard of the appellant is the tip of the iceberg in the discipline of teaching, a noble and learned profession; it is for each teacher and collectively their body to stem the rot to sustain the faith of the society reposed

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in them. Enquiry is not a panacea but a nail in the coffin. It is self-inspection and correction that is supreme. It is seen that the rules wisely devised have given the power to the Director, the highest authority in the management of the institution to take decision, based on the fact-situation, whether a summary enquiry was necessary or he can dispense with the services of the appellant by giving pay in lieu of notice. Two safeguards have been provided, namely he should record reasons for his decision not to conduct an enquiry under the rules and also post with facts the information with Minister, Human Resources Department, Government of India in that behalf. It is seen from the record that the appellant was given a warning for his sexual advances towards a girl student but he did not correct himself and mend his conduct. He went to the girl's hostel at 10 p.m. in the night and asked the hostel helper, Bharat Singh to misguide the girl by telling her that Bio-Chemistry Madam was calling her; believing the statement, she came out of the hostel. It is the admitted position that she was an active participation in cultural activities. Taking advantage thereof, he misused his position and made sexual advances towards her. When she ran away from his presence, he pursued her to the room where she locked herself inside; he banged the door. When he was informed by her roommates that she was asleep, he rebuked them and took the torch from the room and went away. He admitted his going there and admitted his meeting with the girl but he had given a false explanation which was not found acceptable to the Enquiry Officer, namely, Assistant Director. After conducting the enquiry, he submitted the report to the Director and the Director examined the report and found him not worthy to be a teacher in the institution. Under those circumstances, the question arises whether the girl and her roommates should be exposed to the cross-examination and harassment and further publicity? In our considered view, the Director has correctly taken the decision not to conduct any enquiry exposing the students and modesty of the girl and to terminate the services of the appellant by giving one month's salary and allowances in lieu of notice as he is a temporary employee under probation. In the circumstances, it is very hazardous to expose the young girls to tardy process of cross-examination. Their statements were supplied to the appellant and he was given an opportunity to controvert the correctness thereof. ..... "

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15. The Supreme Court, taking note of the Rules in the form of

notification and with a view to ensure safety and security of girl students and to protect their modesty and prevent their unnecessary exposure at an enquiry in relation to the conduct of a teacher resulting in sexual harassment of girl student involving misconduct or mortal turpitude, arrived at a conclusion not to conduct further enquiry and approved the order of the Director terminating the services of the appellant by giving one month's salary and allowances in lieu of notice. But, it is relevant to mention that the appellant therein is a temporary employee and at the relevant time he was under probation and as pointed out earlier, there is a notification by the Institution to dispense with the regular enquiry under the Rules. In the case on hand, admittedly, there is no such Rule dispensing with the enquiry. However, the Statutes enable the Vice-chancellor to take charge of the proceedings of enquiry at any stage and complete the enquiry in the manner he thinks fit, in the interest of University (Vide Chapter VI – (XIII) Discipline and Control Clause (8) of the Statutes). In other words, the statutes make it clear that in the interest of University, the Vice-chancellor is free to change the mode of enquiry. It is not in dispute that though no full-fledged enquiry was conducted by the Four Member Committee, statements were obtained from the complainants as well as respondents 4 to 7. The Committee report further shows that the said respondents were briefed about the details of the complaints and they also submitted their reply. Though it is argued on the side of respondents 4 to 7 that the principles enunciated in the judgment of the Supreme Court in Vishaka case [Vishaka and Others v. State of Rajasthan and Others - (1997) 6 SCC 241], are not applicable, taking note of the fact that the victims are post graduate girl students and the persons against whom complaints were made are professors and persons working under them, by applying the decision of the Supreme Court in Avinash Nagra case (cited supra), we are of the view that in order to protect the modesty of girl students and to prevent their unnecessary exposure at an enquiry, they need not appear and depose before the present Enquiry Officer. On the other hand, the Enquiry Officer is directed to take note of their statements, supply copy of the same to respondents 4 to 7 and after giving opportunity to them to offer their further response, if any, the Enquiry Officer is free to submit his report for further action. It is for the University to supply/place necessary materials, viz., attendance registers for M.A., (Social Work) and M.Phil courses during the relevant years, despatch note books for 2000-2003, copies of transfer/conduct certificates given to the students and other materials relating to sending complainants for project/field work, to the Inquiry Officer through the persons concerned other than the complainants.

Accordingly, we dispose of the writ appeal with the following directions:

(i) The complainants/victim girls need not appear and depose before the Enquiry Officer;

(ii) The Enquiry Officer shall supply copies of the deposition/statements of the complainants made before the Four Member Committee to respondents 4 to 7 and after getting their response, consider and submit his report on merits;

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(iii) The University shall place all required material /documents, such as, attendance registers for M.A., (Social Work) and M.Phil courses during the relevant years, despatch note books for 2000-2003, copies of transfer/conduct certificates given to the students and other materials relating to sending complainants for project / field work before the Enquiry Officer.

(iv) Following the above procedure, the Enquiry Officer shall submit his finding to the disciplinary authority within a period of eight (8) weeks from the date of receipt of copy of this order.

(v) Based on the enquiry report, the Competent Authority shall pass appropriate orders within a period of four weeks thereafter.

There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

kh

Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1.Dr. K. Meena
Convenor, Vice-Chancellor
Committee
Bharathidasan University
Palakaliperur
Tiruchirapalli 620 024.

2.The Registrar
Bharathidasan University
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1 CC TP G.P, SR 3576
1 CC TO MR.AL.GANDHIMATHI, SR 3881
1 CC TO MR.M.S.PANDIYAN, ADVOCATE SR 3516
1 CC TO MR.G.ETHIRAJULU, ADVOCATE SR 3493
1 CC TO M/S ROW & REDDY, SR 3490

P.D. Judgment in

W.A.No.3429 of 2004

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BP/23.1 Dated:20.01.2007